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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,376	12/31/2003	Keith A. Rindlesbach	01845-22396	4892
20551 7590 05/12/2008 THORPE NORTH & WESTERN, LLP. P.O. Box 1219 SANDY, UT 84091-1219				
EXAMINER				
CHOI, FRANK I				
ART UNIT		PAPER NUMBER		
1616				
MAIL DATE		DELIVERY MODE		
05/12/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Communication Re: Appeal

Application No.

10/750,376

Examiner

FRANK I. CHOI

Applicant(s)

RINDLESBACH, KEITH A.

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ The Notice of Appeal filed on 2/5/2008 is not acceptable because:
- (a) ☐ it was not timely filed.
 - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
 - (c) ☐ the appeal fee received on _____ was not timely filed.
 - (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
 - (e) ☒ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
 - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.
2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:
- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
 - (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
 - (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:
- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
 - (d) ☒ other: See Continuation Sheet.
4. ☒ Because of the dismissal of the appeal, this application:
- (a) ☐ is abandoned because there are no allowed claims.
 - (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
 - (c) ☒ is before the examiner for consideration.

Continuation of 3. (d) Other: After a non-final office action (11/5/2007) reopening prosecution after an appeal brief (8/20/2007), the Appellant may not file both a notice of appeal and amendment followed by an appeal brief (2/26/2008). In this case, the notice of appeal is defective and the amendment(2/5/2008) and appeal brief (2/26/2008) are treated as a reply under 37 CFR 1.111. The Appellant is directed to the USPTO website <<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/bpaifaq.html>>, FAQ C7 and C8.

/Johann Richter/